

AA 164-00
VAR

Pendennis Mount
0073

MSA, S-1829-703

HC letter
4/7/00



Judge John C. North, II
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 260-7516 Fax: (410) 974-5338

April 7, 2000

Mr. Kevin Dooley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, MD 21401

RE: Special Exception 2000-0073-S and Variance 2000-0074-V, Pendennis Mount Assn.

Dear Mr. Dooley:

This office has received the applications referenced above. However, key information is missing from the site plan and the descriptive materials. Given the nature of the special exception and variance requested, the following information is necessary: the existing number of slips; the proposed number of slips; the number of lots within the Critical Area within the subdivision; and the length of shoreline within the subdivision. Also, environmental features (topography, tree cover, soils, etc.) and existing structures must be shown on the site plan. Also, what is the justification for not providing parking and sanitary facilities at this community marina?

Please provide the information listed above to this office so we can complete our review of this request. If you have any questions, I can be reached at (410) 260-7035. Thank you for your assistance with this matter.

Sincerely,

LeeAnne Chandler
Natural Resources Planner

cc: AA164-00

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450

NIF

RECEIVED

AUG 17 2000

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBERS 2000-0073-S AND 2000-0074-V

**IN RE: PENDENNIS MOUNT ASSOCIATION, INC. AND
PENDENNIS MOUNT BOAT CLUB, INC.**

THIRD ASSESSMENT DISTRICT

DATE HEARD: JULY 27, 2000

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: PATRICIA A. MILEY

DATE FILED: AUGUST 15, 2000

PLEADINGS

Pendennis Mount Association, Inc. and Pendennis Mount Boat Club, Inc., the applicants, seek a special exception (2000-0073-S) to permit the expansion of an existing community pier and a variance (2000-0074-V) to permit the expansion with less lot area and setbacks and absent sanitary facilities and parking on property located along the west side of Carrollton Road, north of Carvel Road, Annapolis.

PUBLIC NOTIFICATION

The case was advertised in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175' of the property was notified by mail, sent to the address furnished with the application. John Bajus, President, Pendennis Mount Boat Club, Inc., testified that the property was posted on July 10, 2000. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

This case concerns Lot 51 in the subdivision of Pendennis Mount, Annapolis. The property comprises 13,000 square feet and is zoned R-2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). It is improved with a 10-slip "L" shaped community

pier (6' X 257' and three finger piers).¹ The applicants seek to add 12 boat slips. The expansion will be accomplished by extending the existing pier 52 feet perpendicular to the shore; than 150 feet parallel to the shore with six finger piers. The applicants do not intend to provide sanitary facilities and parking.

A community marina is a special exception use in the R-2 district subject to the specific criteria in Anne Arundel County Code, Article 28, Section 12-214 and the general criteria in Section 12-104. Section 12-214(a)(1) requires a minimum lot size of 30,000 square feet. Section 12-214(a)(2) requires compliance with the requirements for development in an MA-1 community marina district. Section 5-124(2) in turn requires a 20-foot setback from the side limits of the marina basin for uncovered slips located perpendicular to the shore. Section 12-214(a)(4) requires sanitary facilities.² Finally, Section 12-214(a)(6) requires permanent off street parking at a rate of one space for each five slips, and adequate useable land for parking at a rate of one space for each two slips; all parking to be outside the buffer. Accordingly, in addition to the special exception, the proposal necessitates variances as follows:

1. An area variance of 17,000 square feet;
2. A full variance to the required setback;
3. A full variance to the requirement for sanitary facilities;

¹Access from Carrollton Road is via a combination walkway and network of stairs descending over steep slopes.

²Under Section 5-125(a), sanitary facilities are required at the rate of one toilet and one lavatory for each sex for up to 99 slips.

4. A full variance to the requirement for parking.

Patricia A. Miley, a zoning analyst with the Office of Planning and Zoning, summarized the zoning history of the property. The existing marina received special exception approvals in Case No. S-138-91 (July 18, 1991) and BA 72-91S (August 12, 1993). The witness contended that the proposed expansion is excessive. She also indicated that review of the applicants' Critical Area report, including Submerged Aquatic Vegetation (SAV) information, has not been completed. By way of conclusion, she opposed the application.

Mr. Bajus testified that the Pendennis Mount Boat Club, Inc. leases the property from the Pendennis Mount Association, Inc. The witness described the historical usage of the property. It was set aside as community property when the subdivision was platted in the 1940's. A marina permit issued in 1956. There were 17 slips as of 1961. In 1990, the marina was repaired and reconstructed to a 10-slip configuration. Finally, three new mooring pilings were installed in 1993. Throughout the duration of its existence, the facility has never offered parking or sanitary facilities.

Concerning the merits of the application, the witness testified that the Pendennis Mount subdivision is a compact community of 58 homes on 77 lots. As older residents have relocated, the newer ones have requested deeper water slips.³ The witness contended that the proposal will have little environmental impact and

³According to a community survey, there is a demand for 17 to 20 additional slips.

is preferable to multiple piers accessed across the steep shoreline cliff.⁴ The witness testified that the terrain and accessibility rule out the installation of sanitary facilities and parking.⁵ The witness indicated that there is no other community property along the more than 1600 linear feet of waterfront in the subdivision. He observed that there would be no construction on the land side of mean high-water and therefore no forest cover removal. He contended that the proposal will not substantially impair the use and enjoyment of adjacent property, except as set forth in the agreement with the Melogranas. Finally, he submitted a photograph depicting an extreme low tide to justify the need for deep water slips.

Gail Reed, an environmental consultant to the applicants, testified that she visited the site on multiple occasions in accordance with the applicable guidelines. Her rakings found no evidence of SAV growth. She predicted no adverse impacts to Critical Area resources from the planned expansion.

Area residents Ed Miller, Richard Batdorf, Eleanor Melograna, Dick Tanczos, Debbie Gosselin, Judith Tanczos and Kathleen Roahen all testified in support of the application. Much of their testimony was cumulative. Ms. Gosselin in particular observed that she is aware of the need for the expansion

⁴The proposed installation parallels the property of Frank and Eleanor Melograna. The Melogranas have signed an agreement to permit the encroachment in exchange for two slips. The Melogranas have also agreed to forego constructing their own pier into their riparian area.

⁵There is parking for three cars along Carrollton Road abutting the site. The Club's standing rules restrict the use of these spaces to loading and unloading of vehicles. According to the witness, parking has not been problematic. He submitted signed statements from several area residents expressing the same conclusion and anticipating no new parking congestion from the expansion.

based on her experience managing a commercial marina.

John Bennett, who resides immediately south of the property, opposed the application. He stated that the existing pier is under utilized and that the steep climb from the shore to the road makes it difficult for the boaters to return to their homes for sanitary facilities. He disputed that there is a sufficient demand for large slips and contended the active water area is not a desirable location for a pier. Mr. Bennett also indicated that there are only 10 waterfront lots in the entire community with only two capable of supporting a pier. He contended that the pier lighting creates a nuisance. Finally, he agreed that there has been little parking congestion so far; but nonetheless expressed concern about the potential increase.

By way of rebuttal, Mr. Bajus testified that a portion of the lighting reflectors on the stairways have been blackened to reduce spillage toward Mr. Bennett's property.

I visited the site and the neighborhood. The site is characterized by an exceptionally steep cliff – approximately 100 steps down to the pier. The cliff is heavily vegetated. The walkway and the pier exhibit a high degree of maintenance. At the time of my visit, there were no cars in the parking spaces along Carrollton Road. Five boats were moored at the pier. The neighborhood is characterized by well-maintained homes.

Upon review of the facts and circumstances, I find and conclude that the applicants have met their burden of proof such that the special exception shall be approved. Considering the specific criteria, the facility is community owned and

established, and operated for the benefit of the residents of a platted and recorded riparian subdivision. I am satisfied that a need exists for the proposed facilities. Although the existing pier is under utilized, the reason is that it offers insufficient water depth. There was evidence of a survey for up to 17 to 22 deep water slips. Several community members indicated their desire to moor boats at the community facility. The facility is certainly water dependent. Ms. Reed testified without contradiction that there will be no adverse impacts to water quality and fish, plant, and wildlife habitat. There are no non-water dependent structures or operations associated with water dependent projects or activities located outside the buffer. There will be no new disturbance to the buffer. Goods and services are not offered for sale. The number of slips does not exceed the number permitted. The balance of the criteria are the subject of the variance.

Considering the general criteria, the record reflects that the community pier has operated absent any detriment to the public health, safety and welfare. There is no reason to expect any change. The location and nature of the use and its street access is compatible with the appropriate and orderly development of the R-2 district. This is a community pier in a water privileged residential subdivision. The use will be no more objectionable with regard to noise, fumes, vibration, or light than permitted uses. The applicants have taken steps to minimize the extent of stray lighting. At the same time, it is certainly necessary to provide lighting down to the water. There is no conflict with programmed facilities. Electric service is available and adequate with suitable access. The proposal will not

overburden master planned facilities. The use has the written comments of the public agencies. Finally, and as noted above, there is sufficient evidence of need.

Considering the variance, the property exhibits unique physical conditions, consisting of its extreme topography, and small size, such that there is no reasonable possibility of developing the lot in strict conformance with the code. I further find that the variance is the minimum necessary to afford relief. A community pier has operated at this site for several decades. My site visit confirmed that the observation by the Board of Appeal that "the pier and its environs are quite attractive" is just as true today as it was in 1992. (Opinion at 3) The applicants have controlled the parking situation through the standing rules. The community is sufficiently compact that the absence of sanitary facilities is acceptable. There was nothing to suggest that the marina expansion will alter the essential character of this water privileged residential community, substantially impair the appropriate use or development of adjacent property, or cause a detriment to the public welfare. The approval shall be subject to the condition in the Order.

ORDER

PURSUANT to the application of Pendennis Mount Association, Inc., and Pendennis Mount Boat Club, Inc., petitioning for a special exception to permit the expansion of an existing community pier and a variance to permit the expansion of a community pier with less lot area and setbacks and without sanitary facilities and

parking; and

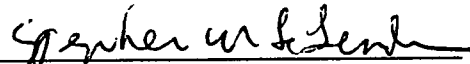
PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 15 day of August, 2000,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** a special exception to permit the expansion of an existing community pier in accordance with the site plan.

FURTHERED ORDERED, that the applicants are also **granted** variances as follows:

1. An area variance in the amount of 17,000 square feet;
2. A full variance to the setback from the side limits of the marina basin;
3. A full variance to the required sanitary facilities; and
4. A full variance to the required parking.

The foregoing special exception and variances are subject to the condition that the applicant shall record the "Pier and Waterfront Agreement" dated July 15, 1999 by and between Pendennis Mount Boat Club, Inc. and Frank S. and Eleanor B. Melograna within 30 days of the Order.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved

thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 12-107(a) states:

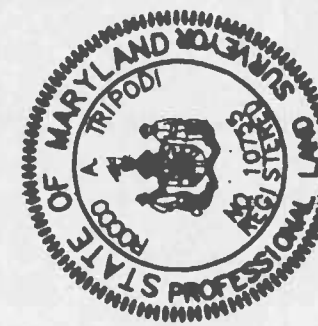
Approval of a special exception is rescinded by operation of law if

- (1) action to implement the use is not begun within one year; and
- (2) the use is not completed and in operation within two years.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.



DATE

REV.	#	DATE	DESCRIPTION

McCRONE
ENGINEERING & ENVIRONMENTAL SCIENCES
LAND PLANNING & SURVEYING & CONSTRUCTION SERVICES

205 BRIDGES AVENUE
ANNAPOLIS, MARYLAND 21401
(410) 267-9621
Fax (410) 267-9932

ANAPOLIS CENTREVILLE ELKTON PRINCE FREDERICK SALISBURY

DATE:	Dec 28, 1999
JOB NO.:	C1402005
SCALE:	1" = 30'
DRAWN BY:	B. CRAIG
PROJ. MGR.:	D. MILLER
APPROVED:	R.A.T.
FOLDER REF.:	PENDENNIS MOUNT SUB. PLAT 1 (BLUE)

LOCATION DRAWING

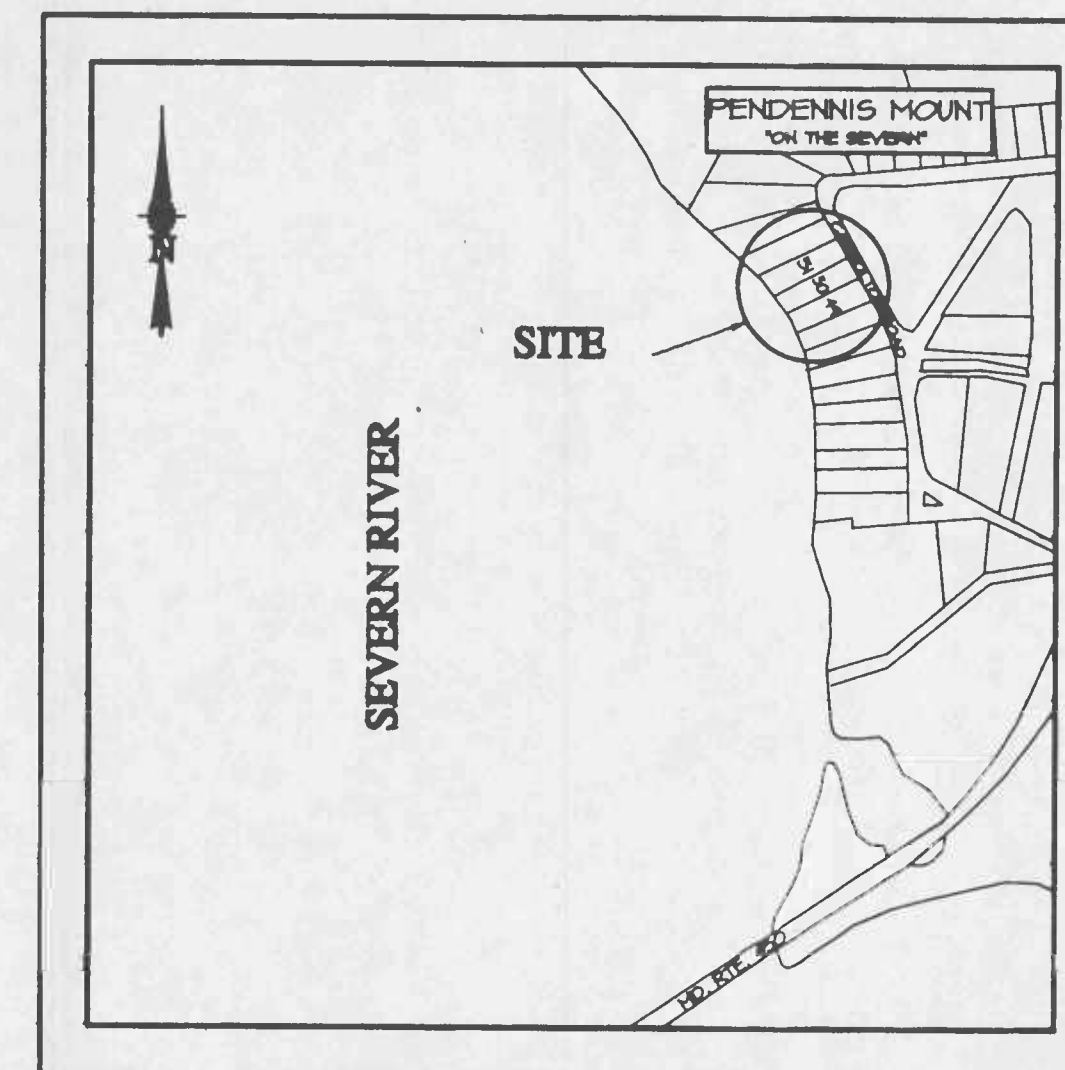
FOR
PENDENNIS MOUNT

BOAT CLUB

CARROLLTON ROAD
PENDENNIS MOUNT

MAP 46
THIRD DISTRICT ANNE ARUNDEL COUNTY MARYLAND
GRID 13
PARCEL 314

SHEET NO. 1 OF 1
CADD FILE: s:\bajjg.pro
FILE NO. s-17-02



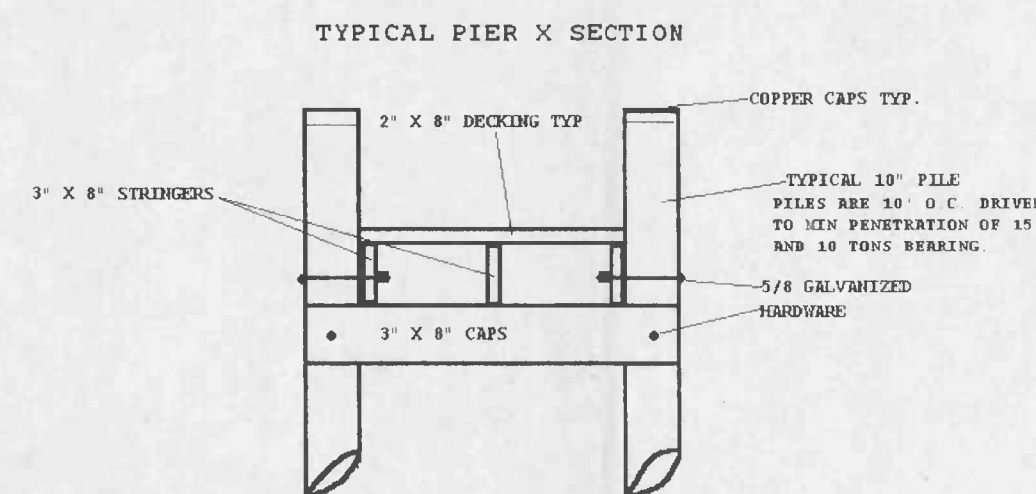
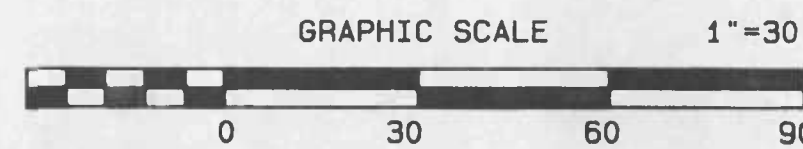
VICINITY MAP
NOT TO SCALE

SURVEYOR'S CERTIFICATE

I hereby certify that the LOCATION DRAWING, showing the existing pier and boardwalk, has been prepared as a result of an on-site inspection of the premises; that the plat is of benefit to the consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with a contemplated transfer, financing or re-financing; that the plat is NOT to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements; that the plat does NOT provide for the accurate identification of property boundary lines (such identification may not be required for the transfer of title or securing financing or re-financing); that any possible encroachments shown hereon were determined by a visual inspection of the property either may cross the apparent property lines; that the minimum setback lines shown (if any) are based upon those provided by the requesting party; that this drawing is subject to a title report which may reveal additional conveyances, easements, covenants, rights-of-way or more stringent building restriction lines not shown hereon. If this drawing does not have an original seal and signature (the seal and signature are not copies), it is to be considered invalid.

Rocco A. Tripodi 12/28/99
Rocco A. Tripodi, Prof. L.S. 120755
Date of Latest Field Notes: 12-08-99

ALL TIE DISTANCES ARE WITHIN A MINIMUM OF FIVE TENTHS OF A FOOT (0.5') OF THE DISTANCES SHOWN.



George Germanos
Engr. George Germanos P.E. #6844

1/6/00
Date

